APPENDIX D

Testimony of John P. Fishwick, Senior Vice President, Norfolk and Western Railway Company, in I.C.C. Finance Docket 21989, December 9, 1966, Exhibit FH-41, pp. 30-34:

In his testimony in the earlier phase of this reopened proceeding, the Chairman of the Board of the Pennsylvania Railroad claimed that "indefinite delays" in consummation of Penn-Central would threaten that merger. This threat is designed to resurrect some sense of urgency for immediate consummation of Penn-Central now that the District Court in New York has found that the New Haven situation does not justify immediate consummation.

Nothing suggested by N&W in this or any other proceeding contemplates an indefinite delay. The only delay we have supported is that necessary in the public interest to assure the continued viability of other Eastern railroads. Our proposal is for an expedited solution which would protect all the threatened Eastern railroads, including CNJ and Reading, whose financial position is precarious and for whom Penn-Central provides no solution whatever.

Penn-Central will hold together during the period necessary to accomplish that objective. The usual problem in holding a merger together is that the exchange ratio gets out of line. No such claim is made by Pennsylvania's Chairman. In other instances, a merger cannot be held together indefinitely because of a time limit imposed in the agreement. Such a time limit was present in the N&W-Wabash lease, and was included at the insistence of Pennsylvania. No such deadline is included in the Penn-Central agreement.

The only factors cited by Pennsylvania's Chairman as threatening the Penn-Central merger are uncertainties of personnel and of capital expenditure programs. These are

not substantial threats, but are well within the capability of management to control. Experience shows that mergers can be held together longer than Penn-Central has been, for example, Seaboard-Coast Line, and Great Northern-Northern Pacific. The cement that binds Penn-Central together is the prospect of vast merger savings, whether $80 million that Pennsylvania and New York Central tell the Commission or $100 or $120 million that Pennsylvania, or at least New York Central, tells everyone else, together with the prospect of attracting large volumes of additional traffic through greatly improved service.

Pennsylvania's Chairman has claimed that N&W seeks to kill the Penn-Central merger or dictate the terms of the restructuring of the East. This is not true. N&W does not seek to kill Penn-Central. It seeks to find a way that the other half of the East can survive in the face of Penn-Central and to bring to the shipping public dependent on their service the same benefits of territorywide single-line service to be offered by Penn-Central.

N&W does not seek to dictate the terms of the restructuring of the East. N&W and C&O have a proposal which they believe to be in the public interest and they have been trying for over a year to obtain a hearing on the merits of their proposal. The only unqualified railroad opposition to the proposal, and even to the grant of a hearing, comes from Pennsylvania and New York Central.

It is Pennsylvania that is attempting to dictate the terms of the restructuring of the East. Under the Commission's finding in Finance Docket No. 21510, Pennsylvania controlled N&W. The N&W-Virginian merger took place because Pennsylvania approved. The N&W-Nickel Plate merger, the Wabash lease, the purchase of the Sandusky line and related transactions took place because Pennsylvania approved. N&W is what it is today be-

cause Pennsylvania wanted it that way. Pennsylvania agreed to divest itself of N&W because it preferred to trade N&W for Central. Testifying in this proceeding on August 22, 1962, Mr. Symes was asked why Pennsylvania was willing to divest itself of its N&W stock as a condition to the Penn-Central merger. His reply was (Tr. 398):

> "Because we think the importance of this merger to both the Pennsylvania and New York Central is probably more important than the N. & W. stock."

Under the three-system East as envisioned by Pennsylvania, Penn-Central would completely dominate the competitive Eastern rail market. This "Symes' Plan" was designed by Pennsylvania, and Pennsylvania has insisted upon strict adherence to that plan for Pennsylvania domination of the East. But the three-system plan will not work because it will not provide competitive balance in the East and it will not solve the problem of Reading and CNJ. N&W alone cannot be compelled to shoulder the burden of including and rehabilitating E-L and B&M on any basis that would recognize any value in the stocks of these companies.

N&W and C&O have come forward with the only proposal made thus far that will solve the serious problems raised by Penn-Central. It seems imperative, in the public interest, that our merger proposal be heard, and that it be considered as the best, if not only, answer to the Penn-Central threat.

The arguments in favor of immediate consummation of the Penn-Central merger have all collapsed. The dramatic and continuing improvement in the revenues and earnings of Pennsylvania and New York Central makes it clear that immediate merger is not required to insure the survival of these carriers. Nor will immediate merger

in any way advance the date of inclusion of New Haven in Penn-Central.

Thus, the Commission has ample time to hear and decide all of the proposals, including N&W-C&O's merger proposal designed to meet the threat of Penn-Central and find a home for all the small Eastern railroads. And this can be accomplished well before New Haven can actually be included in Penn-Central, an inclusion which the Commission has found to be essential to its finding that Penn-Central itself is consistent with the public interest. Under these circumstances, to permit Penn-Central to be consummated until these problems are resolved would be "to burn the house to roast the pig."